

CHAPTER 482

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 21-1282

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also SENATOR(S) Gonzales, Buckner, Fenberg, Fields, Moreno, Story, Winter.

AN ACT

CONCERNING ADDITIONAL CONSUMER PROTECTIONS RESULTING FROM THE REGULATION OF MORTGAGE SERVICERS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** article 21 to title 5 as follows:

ARTICLE 21
Colorado Nonbank Mortgage Servicers Act

5-21-101. Short title. THE SHORT TITLE OF THIS ARTICLE 21 IS THE "COLORADO NONBANK MORTGAGE SERVICERS ACT".

5-21-102. Scope of article. UNLESS OTHERWISE PROVIDED IN THIS ARTICLE 21, THIS ARTICLE 21 APPLIES TO ANY PERSON ENGAGED IN SERVICING A RESIDENTIAL MORTGAGE LOAN SECURED BY A DWELLING OR RESIDENTIAL REAL PROPERTY LOCATED IN THIS STATE.

5-21-103. Definitions. AS USED IN THIS ARTICLE 21, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ADMINISTRATOR" MEANS THE ADMINISTRATOR OF THE "UNIFORM CONSUMER CREDIT CODE", ARTICLES 1 TO 9 OF THIS TITLE 5, DESIGNATED PURSUANT TO SECTION 5-6-103.

(2) "BORROWER" MEANS AN INDIVIDUAL OBLIGATED TO REPAY A RESIDENTIAL MORTGAGE LOAN.

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(3) "LOANS HELD FOR SALE" MEANS LOANS ORIGINATED AND HELD FOR SALE FOR UP TO THREE HUNDRED SIXTY-FOUR DAYS AFTER EACH LOAN'S ORIGINATION.

(4) "MORTGAGE SERVICER" MEANS A PERSON, WHEREVER LOCATED, THAT IS RESPONSIBLE FOR SERVICING A COLORADO RESIDENTIAL MORTGAGE LOAN. A MORTGAGE SERVICER INCLUDES A PERSON THAT MAKES PAYMENTS TO A BORROWER UNDER A REVERSE MORTGAGE AS DEFINED IN SECTION 11-38-102 (4). A MORTGAGE SERVICER DOES NOT INCLUDE:

(a) A SUPERVISED FINANCIAL ORGANIZATION AS DEFINED IN SECTION 5-1-301 (45);

(b) A MORTGAGE LOAN ORIGINATOR REGULATED BY THE DIVISION OF REAL ESTATE OR AS DEFINED IN SECTION 12-10-702 (14)(a) OR A MORTGAGE COMPANY REGULATED BY THE DIVISION OF REAL ESTATE OR AS DEFINED IN SECTION 12-10-702 (12); EXCEPT THAT A MORTGAGE LOAN ORIGINATOR OR MORTGAGE COMPANY THAT ALSO SERVICES A RESIDENTIAL MORTGAGE LOAN IS A MORTGAGE SERVICER;

(c) A FEDERAL AGENCY OR DEPARTMENT;

(d) A COLLECTION AGENCY AS DEFINED IN SECTION 5-16-103 (3) THAT IS LICENSED PURSUANT TO SECTION 5-16-120 OR IS EXEMPT FROM LICENSURE UNDER SECTION 5-16-103 (3)(e) AND WHOSE MORTGAGE DEBT COLLECTION BUSINESS INVOLVES COLLECTION OF RESIDENTIAL MORTGAGE LOANS OBTAINED BY THE COLLECTION AGENCY AFTER DEFAULT; EXCEPT THAT A COLLECTION AGENCY THAT ALSO SERVICES RESIDENTIAL MORTGAGE LOANS ASSIGNED TO THE COLLECTION AGENCY BEFORE DEFAULT IS A MORTGAGE SERVICER;

(e) AN AGENCY, INSTRUMENTALITY, OR POLITICAL SUBDIVISION OF THIS STATE;

(f) A SUPERVISED LENDER AS DEFINED IN SECTION 5-1-301 (46); EXCEPT THAT A SUPERVISED LENDER, OTHER THAN A SUPERVISED FINANCIAL ORGANIZATION AS DEFINED IN SECTION 5-1-301 (45), THAT ALSO SERVICES RESIDENTIAL MORTGAGE LOANS IS A MORTGAGE SERVICER;

(g) A SMALL SERVICER THAT SERVICES FEWER THAN FIVE THOUSAND RESIDENTIAL MORTGAGE LOANS IN ANY CALENDAR YEAR, EXCLUSIVE OF LOANS HELD FOR SALE, AS DETERMINED BY THE ADMINISTRATOR, WHO SHALL APPLY THE CRITERIA IN 12 CFR 1026.41 (e)(4)(iii) OR ANY SUCCESSOR REGULATION;

(h) A PERSON THAT THE ADMINISTRATOR DESIGNATES BY RULE OR ORDER AS EXEMPT. THESE EXEMPTIONS ARE LIMITED TO NONPROFIT ORGANIZATIONS, GOVERNMENT AGENCIES, OR OTHER ENTITIES WHOSE PRIMARY BUSINESS IS NOT TO SERVICE MORTGAGES AND THAT SEEK TO PROMOTE AFFORDABLE HOUSING OR FINANCING.

(i) AN ORIGINATOR OR SERVICER THAT UTILIZES A SUBSERVICER TO CARRY OUT THE ADMINISTRATIVE FUNCTIONS OF SERVICING A MORTGAGE UNLESS THE SUBSERVICER IS ACTING AT THE DIRECTION OF THE ORIGINATOR OR SERVICER; OR

(j) A PERSON THAT SERVICES LOANS HELD FOR SALE.

(5) "NOTIFIER" MEANS A PERSON REQUIRED TO NOTIFY THE ADMINISTRATOR OF THE PERSON'S ACTIVITIES AS A MORTGAGE SERVICER PURSUANT TO THIS ARTICLE 21.

(6) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

(7) "RESIDENTIAL MORTGAGE LOAN" MEANS A LOAN THAT IS PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD USE AND THAT IS SECURED BY A MORTGAGE, DEED OF TRUST, OR OTHER EQUIVALENT, CONSENSUAL SECURITY INTEREST ON A DWELLING OR RESIDENTIAL REAL PROPERTY UPON WHICH IS CONSTRUCTED OR INTENDED TO BE CONSTRUCTED A DWELLING AS DEFINED BY SECTION 5-1-301 (18).

(8) "SERVICING" MEANS RECEIVING ANY SCHEDULED PERIODIC PAYMENTS FROM A BORROWER PURSUANT TO THE TERMS OF A RESIDENTIAL MORTGAGE LOAN, INCLUDING AMOUNTS FOR ESCROW ACCOUNTS, AND MAKING THE PAYMENTS TO THE OWNER OF THE LOAN OR OTHER THIRD PARTIES OF PRINCIPAL AND INTEREST AND SUCH OTHER PAYMENTS WITH RESPECT TO THE AMOUNTS RECEIVED FROM THE BORROWER AS MAY BE REQUIRED PURSUANT TO THE TERMS OF THE RESIDENTIAL MORTGAGE SERVICING LOAN DOCUMENTS OR SERVICING CONTRACT. IN THE CASE OF A REVERSE MORTGAGE, SERVICING INCLUDES MAKING PAYMENTS TO THE BORROWER.

5-21-104. Notification required. ON AND AFTER JANUARY 31, 2022, A PERSON SHALL NOT ACT AS A MORTGAGE SERVICER, DIRECTLY OR INDIRECTLY, WITHOUT NOTIFYING THE ADMINISTRATOR PURSUANT TO SECTION 5-21-105.

5-21-105. Notification by mortgage servicers - rules. (1) Notification. (a) A PERSON ACTING AS A MORTGAGE SERVICER MUST NOTIFY THE ADMINISTRATOR AND PAY THE FEE PRESCRIBED IN SECTION 5-21-106 WITHIN THIRTY DAYS AFTER COMMENCING SERVICING IN THE STATE, AND, THEREAFTER, ON OR BEFORE JANUARY 31 OF EACH YEAR. THE NOTIFICATION MUST STATE THE NOTIFIER'S LEGAL NAME AND ALL TRADE NAMES USED, THE ADDRESS OF THE NOTIFIER'S PRINCIPAL OFFICE, WHICH MAY BE OUTSIDE THIS STATE, AND SUCH OTHER INFORMATION AS THE ADMINISTRATOR MAY REQUIRE.

(b) WITH EVERY RENEWAL NOTIFICATION OR AT A DATE PRESCRIBED BY RULE BY THE ADMINISTRATOR, EACH NOTIFIER SHALL SUBMIT AN ANNUAL REPORT RELATING TO MORTGAGE SERVICING BY THE NOTIFIER IN THE FORM PRESCRIBED BY THE ADMINISTRATOR. INFORMATION CONTAINED IN ANNUAL REPORTS IS CONFIDENTIAL, IS NOT SUBJECT TO DISCLOSURE PURSUANT TO PART 2 OF ARTICLE 72 OF TITLE 24, AND MAY BE PUBLISHED ONLY IN COMPOSITE FORM.

(2) **Records retention - records request.** (a) A MORTGAGE SERVICER SHALL MAINTAIN ADEQUATE RECORDS FOR NOT LESS THAN FOUR YEARS FOLLOWING THE FINAL PAYMENT ON THE RESIDENTIAL MORTGAGE LOAN, TRANSFER OF THE MORTGAGE SERVICING RIGHTS, OR THE ASSIGNMENT OF THE LOAN, WHICHEVER OCCURS FIRST. UPON REQUEST BY THE ADMINISTRATOR, A MORTGAGE SERVICER SHALL MAKE THE RECORDS AVAILABLE OR SHALL SEND THE RECORDS TO THE ADMINISTRATOR BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED,

OR BY ANY EXPRESS DELIVERY CARRIER THAT PROVIDES A DATED DELIVERY RECEIPT, NOT LATER THAN THIRTY BUSINESS DAYS AFTER REQUESTED BY THE ADMINISTRATOR OR OTHER METHOD OF DELIVERY AS AGREED TO IN WRITING BY THE ADMINISTRATOR, INCLUDING SECURE ELECTRONIC TRANSMISSION. UPON A NOTIFIER'S REQUEST, THE ADMINISTRATOR MAY GRANT THE NOTIFIER ADDITIONAL TIME TO MAKE THE RECORDS AVAILABLE OR TO SEND THE RECORDS TO THE ADMINISTRATOR.

(b) EVERY MORTGAGE SERVICER SHALL MAINTAIN RECORDS IN CONFORMITY WITH THIS ARTICLE 21, RULES ADOPTED PURSUANT TO THIS ARTICLE 21, AND GENERALLY ACCEPTED ACCOUNTING PRINCIPLES AND PRACTICES IN A MANNER THAT WILL ENABLE THE ADMINISTRATOR TO DETERMINE WHETHER THE SERVICER IS COMPLYING WITH THIS ARTICLE 21. A MORTGAGE SERVICER'S RECORD-KEEPING SYSTEM IS SUFFICIENT IF THE SERVICER MAKES THE REQUIRED INFORMATION REASONABLY AVAILABLE. THE RECORDS NEED NOT BE KEPT IN THE PLACE OF BUSINESS WHERE MORTGAGE LOANS ARE SERVICED IF THE ADMINISTRATOR IS GIVEN FREE ACCESS TO THE RECORDS WHEREVER LOCATED.

5-21-106. Fees. (1) A NOTIFIER SHALL PAY THE FOLLOWING NONREFUNDABLE FEES ESTABLISHED BY THE ADMINISTRATOR PURSUANT TO SUBSECTION (3) OF THIS SECTION:

- (a) AN INITIAL NOTIFICATION FEE; AND
- (b) AN ANNUAL NOTIFICATION FEE.

(2) THE ADMINISTRATOR SHALL TRANSMIT THE FEES TO THE STATE TREASURER, WHO SHALL CREDIT THEM TO THE UNIFORM CONSUMER CREDIT CODE CASH FUND CREATED IN SECTION 5-6-204 (1).

(3) THE ADMINISTRATOR SHALL SET THE FEES REQUIRED BY SUBSECTION (1) OF THIS SECTION IN AN AMOUNT ESTIMATED TO COVER THE ADMINISTRATOR'S COSTS IN IMPLEMENTING THIS ARTICLE 21 AND MAY PERIODICALLY REDUCE OR INCREASE THE AMOUNT OF ONE OR MORE OF THE FEES IF NECESSARY PURSUANT TO SECTION 24-75-402 (3) AND (4) TO REDUCE THE UNCOMMITTED RESERVES OF THE UNIFORM CONSUMER CREDIT CODE CASH FUND.

5-21-107. Federal laws. (1) A MORTGAGE SERVICER SHALL COMPLY WITH ALL FEDERAL LAWS AND REGULATIONS APPLICABLE TO MORTGAGE SERVICERS FOR THEIR MORTGAGE SERVICING ACTIVITIES, INCLUDING:

- (a) THE FEDERAL "REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974", 12 U.S.C. SEC. 2601 ET SEQ., AS AMENDED; AND
- (b) THE "TRUTH IN LENDING ACT", 15 U.S.C. SEC. 1601 ET SEQ., AS AMENDED.

(2) IN ADDITION TO ANY OTHER REMEDIES PROVIDED BY LAW, A VIOLATION OF ANY FEDERAL LAW OR REGULATION THAT IS COVERED BY SUBSECTION (1) OF THIS SECTION SHALL BE DEEMED A VIOLATION OF THIS ARTICLE 21.

- (3) ALL FINANCIAL RESPONSIBILITY REQUIREMENTS OF THIS ARTICLE 21 SHALL BE

PRESUMED TO BE MET IF A MORTGAGE SERVICER IS CURRENTLY APPROVED TO SERVICE LOANS BY THE FEDERAL NATIONAL MORTGAGE ASSOCIATION, FEDERAL HOME LOAN MORTGAGE CORPORATION, OR GOVERNMENT NATIONAL MORTGAGE ASSOCIATION OR IF IT MEETS PRUDENTIAL STANDARDS ESTABLISHED BY THE CONFERENCE OF STATE BANK SUPERVISORS.

5-21-108. Powers and duties of the administrator - rules. (1) THE ADMINISTRATOR MAY CONDUCT INVESTIGATIONS AND EXAMINATIONS AS FOLLOWS:

(a) FOR PURPOSES OF GENERAL OR SPECIFIC INQUIRY OR INVESTIGATION TO DETERMINE COMPLIANCE WITH THIS ARTICLE 21, THE ADMINISTRATOR MAY ACCESS, RECEIVE, AND USE ANY RECORDS OR INFORMATION BELONGING TO A NOTIFIER OR PERSON SUBJECT TO THIS ARTICLE 21 WHO MAY HAVE FAILED TO NOTIFY THE ADMINISTRATOR PURSUANT TO SECTION 5-21-104, INCLUDING CRIMINAL, CIVIL, AND ADMINISTRATIVE HISTORY INFORMATION; PERSONAL HISTORY AND EXPERIENCE INFORMATION, INCLUDING INDEPENDENT CREDIT REPORTS OBTAINED FROM A CONSUMER REPORTING AGENCY DESCRIBED IN SECTION 603 (p) OF THE FEDERAL "FAIR CREDIT REPORTING ACT", 15 U.S.C. SEC. 1681a, AS AMENDED; AND ANY OTHER RECORDS OR INFORMATION THE ADMINISTRATOR CONSIDERS RELEVANT TO THE INQUIRY OR INVESTIGATION REGARDLESS OF THE LOCATION, POSSESSION, CONTROL, OR CUSTODY OF THE RECORDS OR INFORMATION.

(b) THE ADMINISTRATOR MAY INITIATE AN INVESTIGATION OR EXAMINATION WHERE THERE IS REASON TO BELIEVE THAT THERE IS A POTENTIAL VIOLATION THAT RISKS CONSUMER HARM, WHERE A PERSON WHO MAY BE SUBJECT TO THIS ARTICLE 21 MAY HAVE FAILED TO NOTIFY THE ADMINISTRATOR, OR BASED ON A SUBSTANTIATED COMPLAINT. THE ADMINISTRATOR MAY REVIEW, INVESTIGATE, OR EXAMINE ANY NOTIFIER OR PERSON SUBJECT TO THIS ARTICLE 21 AS OFTEN AS NECESSARY IN ORDER TO CARRY OUT THE PURPOSES OF THIS ARTICLE 21. THE ADMINISTRATOR MAY DIRECT, SUBPOENA, OR ORDER THE ATTENDANCE OF AND EXAMINE UNDER OATH ANY PERSON WHOSE TESTIMONY MAY BE REQUIRED ABOUT THE RESIDENTIAL MORTGAGE LOAN, RESIDENTIAL MORTGAGE LOAN SERVICING, OR THE BUSINESS OR SUBJECT MATTER OF AN EXAMINATION OR INVESTIGATION AND MAY DIRECT, SUBPOENA, OR ORDER THE PERSON TO PRODUCE RECORDS THE ADMINISTRATOR CONSIDERS RELEVANT TO THE INQUIRY. NOTHING LIMITS THE SCOPE OF THE ADMINISTRATOR'S AUTHORITY TO REVIEW AND INVESTIGATE POTENTIAL VIOLATIONS OR HARM DISCOVERED IN THE COURSE OF AN INVESTIGATION.

(c) (I) IN MAKING AN EXAMINATION OR INVESTIGATION AUTHORIZED BY THIS SECTION, THE ADMINISTRATOR MAY CONTROL ACCESS TO ANY RECORDS OF THE NOTIFIER OR PERSON UNDER EXAMINATION OR INVESTIGATION. THE ADMINISTRATOR MAY TAKE POSSESSION OF THE RECORDS OR PLACE A PERSON IN EXCLUSIVE CHARGE OF THE RECORDS IN THE PLACE WHERE THEY ARE USUALLY KEPT.

(II) DURING THE PERIOD OF CONTROL, A PERSON MAY NOT REMOVE OR ATTEMPT TO REMOVE ANY OF THE RECORDS EXCEPT PURSUANT TO A COURT ORDER OR WITH THE WRITTEN CONSENT OF THE ADMINISTRATOR. UNLESS THE ADMINISTRATOR HAS REASONABLE GROUNDS TO BELIEVE THE RECORDS OF THE NOTIFIER OR PERSON HAVE BEEN, OR ARE AT RISK OF BEING, ALTERED OR DESTROYED FOR PURPOSES OF CONCEALING A VIOLATION OF THIS ARTICLE 21, THE NOTIFIER OR OWNER OF THE RECORDS MAY HAVE ACCESS TO THE RECORDS AS NECESSARY TO CONDUCT ITS

ORDINARY BUSINESS AFFAIRS.

(2) IN ORDER TO CARRY OUT THE PURPOSES OF THIS SECTION, THE ADMINISTRATOR MAY:

(a) RETAIN ATTORNEYS, ACCOUNTANTS, OR OTHER PROFESSIONALS AND SPECIALISTS AS EXAMINERS, AUDITORS, OR INVESTIGATORS TO CONDUCT OR ASSIST IN CONDUCTING EXAMINATIONS OR INVESTIGATIONS;

(b) ENTER INTO AGREEMENTS OR RELATIONSHIPS WITH OTHER GOVERNMENT OFFICIALS OR REGULATORY ASSOCIATIONS IN ORDER TO IMPROVE EFFICIENCIES AND REDUCE REGULATORY BURDEN BY SHARING RESOURCES, STANDARDIZED OR UNIFORM METHODS OR PROCEDURES, AND RECORDS OR INFORMATION OBTAINED UNDER THIS SECTION;

(c) USE, HIRE, CONTRACT FOR, OR EMPLOY PUBLICLY OR PRIVATELY AVAILABLE ANALYTICAL SYSTEMS, METHODS, OR SOFTWARE TO EXAMINE OR INVESTIGATE THE NOTIFIER OR PERSON SUBJECT TO THIS ARTICLE 21;

(d) ACCEPT AND RELY ON EXAMINATION OR INVESTIGATION REPORTS MADE BY OTHER GOVERNMENT OFFICIALS WITHIN OR OUTSIDE THIS STATE; AND

(e) ACCEPT AUDIT REPORTS MADE BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT FOR THE NOTIFIER OR PERSON SUBJECT TO THIS ARTICLE 21 IN THE COURSE OF THAT PART OF THE EXAMINATION COVERING THE SAME GENERAL SUBJECT MATTER AS THE AUDIT AND MAY INCORPORATE THE AUDIT REPORT IN A REPORT OF EXAMINATION, REPORT OF INVESTIGATION, OR OTHER WRITING OF THE ADMINISTRATOR.

(3) A PERSON SUBJECT TO INVESTIGATION OR EXAMINATION UNDER THIS SECTION MAY NOT KNOWINGLY WITHHOLD, ABSTRACT, REMOVE, MUTILATE, OR DESTROY ANY RECORDS OR OTHER INFORMATION RELATING TO INFORMATION REGULATED UNDER THIS ARTICLE 21.

(4) WHENEVER IT APPEARS TO THE ADMINISTRATOR THAT A PERSON HAS VIOLATED, IS VIOLATING, OR IS ABOUT TO VIOLATE THIS SECTION OR A RULE ADOPTED PURSUANT TO THIS ARTICLE 21 OR THAT A NOTIFIER OR AN OWNER, DIRECTOR, OFFICER, MEMBER, PARTNER, SHAREHOLDER, TRUSTEE, EMPLOYEE, OR AGENT OF THE NOTIFIER HAS COMMITTED FRAUD, ENGAGED IN DISHONEST ACTIVITIES, OR MADE A MISREPRESENTATION, THE ADMINISTRATOR MAY TAKE ACTION AGAINST THE PERSON OR NOTIFIER IN ACCORDANCE WITH THIS ARTICLE 21.

(5) THE ADMINISTRATOR SHALL ADOPT RULES AS NECESSARY TO IMPLEMENT THIS ARTICLE 21.

5-21-109. Application of administrative procedures. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE 21, SECTIONS 24-4-102 TO 24-4-106 APPLY TO AND GOVERN ALL RULES PROMULGATED AND ALL ADMINISTRATIVE ACTION TAKEN BY THE ADMINISTRATOR PURSUANT TO THIS ARTICLE 21; EXCEPT THAT SECTION 24-4-104 (3) DOES NOT APPLY TO ANY SUCH ACTION.

5-21-110. Administrative enforcement orders. (1) AFTER NOTICE AND HEARING, THE ADMINISTRATOR MAY ORDER A MORTGAGE SERVICER OR A PERSON ACTING IN THE MORTGAGE SERVICER'S BEHALF TO CEASE AND DESIST FROM ENGAGING IN VIOLATIONS OF THIS ARTICLE 21 OR ANY RULE OR ORDER LAWFULLY MADE PURSUANT TO THIS ARTICLE 21. THE ORDER ISSUED BY THE ADMINISTRATOR MAY ALSO REQUIRE THE MORTGAGE SERVICER OR PERSON TO MAKE REFUNDS TO INDIVIDUALS OF OVERCHARGES OR OTHER DAMAGES SUFFERED BY THE BORROWER UNDER THIS ARTICLE 21 AND A CIVIL PENALTY IN THE AMOUNTS STATED IN 12 U.S.C. SEC. 5565 (c)(2), ALL OR PART OF WHICH MAY BE SPECIFICALLY DESIGNATED FOR CONSUMER AND CREDITOR EDUCATIONAL PURPOSES. WHEN SEEKING CIVIL PENALTIES, THE ADMINISTRATOR SHALL CONSIDER THE MITIGATING FACTORS IN 12 U.S.C. SEC. 5565 (c)(3).

(2) A MORTGAGE SERVICER AGGRIEVED BY AN ORDER OF THE ADMINISTRATOR MAY OBTAIN JUDICIAL REVIEW OF THE ORDER IN THE COLORADO COURT OF APPEALS. THE ADMINISTRATOR MAY OBTAIN AN ORDER OF THE COURT FOR ENFORCEMENT OF THE ADMINISTRATOR'S ORDER IN THE DISTRICT COURT UNDER SECTION 24-4-106. ALL PROCEEDINGS UNDER THIS SECTION ARE GOVERNED BY SECTIONS 24-4-105 AND 24-4-106.

5-21-111. Assurance of discontinuance. IF IT IS CLAIMED THAT A PERSON HAS VIOLATED THIS ARTICLE 21, THE ADMINISTRATOR MAY ACCEPT AN ASSURANCE IN WRITING THAT THE PERSON WILL NOT ENGAGE IN THE CONDUCT IN THE FUTURE. THE ASSURANCE MAY ALSO REQUIRE THE PERSON TO MAKE REFUNDS TO INDIVIDUALS OF UNLAWFUL CHARGES UNDER THIS ARTICLE 21, PAY A PENALTY AUTHORIZED IN SECTION 5-21-110, ALL OR PART OF WHICH MAY BE SPECIFICALLY DESIGNATED FOR CONSUMER AND CREDITOR EDUCATIONAL PURPOSES, AND REIMBURSE THE ADMINISTRATOR FOR THE ADMINISTRATOR'S REASONABLE COSTS INCURRED IN INVESTIGATING THE CONDUCT. IF A PERSON GIVING AN ASSURANCE OF DISCONTINUANCE FAILS TO COMPLY WITH ITS TERMS, THE ASSURANCE IS EVIDENCE THAT PRIOR TO THE ASSURANCE, THAT PERSON ENGAGED IN THE CONDUCT DESCRIBED IN THE ASSURANCE.

5-21-112. Injunctions. THE ADMINISTRATOR MAY BRING A CIVIL ACTION TO RESTRAIN A PERSON FROM VIOLATING THIS ARTICLE 21 OR RULES PROMULGATED PURSUANT TO THIS ARTICLE 21 AND FOR OTHER APPROPRIATE RELIEF, INCLUDING SUCH ORDERS OR JUDGMENTS AS MAY BE NECESSARY TO COMPLETELY COMPENSATE OR RESTORE TO THE INDIVIDUAL'S ORIGINAL POSITION ANY INDIVIDUAL AFFECTED BY THE VIOLATION. THE ADMINISTRATOR MAY ALSO APPLY FOR A TEMPORARY RESTRAINING ORDER OR A PRELIMINARY INJUNCTION AGAINST A RESPONDENT PENDING FINAL DETERMINATION OF PROCEEDINGS. NO BOND OR OTHER SECURITY IS REQUIRED OF THE ADMINISTRATOR BEFORE RELIEF UNDER THIS SECTION MAY BE GRANTED.

5-21-113. Civil actions by the administrator. (1) THE ADMINISTRATOR MAY BRING A CIVIL ACTION AGAINST A MORTGAGE SERVICER OR ANY OTHER PERSON FOR ANY VIOLATIONS OF THIS ARTICLE 21. AN ACTION MAY RELATE TO TRANSACTIONS WITH MORE THAN ONE INDIVIDUAL. THE COURT MAY ORDER A MORTGAGE SERVICER TO REFUND TO INDIVIDUALS OVERCHARGES OR OTHER DAMAGES SUFFERED BY THE BORROWER COLLECTED IN VIOLATION OF THIS ARTICLE 21 AND MAY ALSO ASSESS CIVIL PENALTIES AGAINST THE MORTGAGE SERVICER AS SET FORTH IN SECTION

5-21-110. IF THE ADMINISTRATOR PREVAILS IN AN ACTION BROUGHT UNDER THIS SECTION, THE ADMINISTRATOR MAY RECOVER REASONABLE COSTS IN INVESTIGATING AND BRINGING THE ACTION AND MAY RECOVER REASONABLE ATTORNEY FEES. WHEN DETERMINING WHETHER TO SEEK CIVIL PENALTIES UNDER THIS SECTION, THE ADMINISTRATOR SHALL CONSIDER WHETHER THE FEDERAL CONSUMER FINANCIAL PROTECTION BUREAU HAS IMPOSED CIVIL PENALTIES ON THE SAME SERVICER FOR THE SAME VIOLATION AND ANY OTHER MITIGATING FACTORS, IN ORDER TO AVOID DUPLICATIVE CIVIL PENALTIES. IF THE FEDERAL CONSUMER FINANCIAL PROTECTION BUREAU HAS BEEN AWARDED AND PAID CIVIL PENALTIES BASED ON A PARTICULAR ACT OR OMISSION OR A SERIES OF ACTS OR OMISSIONS, CIVIL PENALTIES UNDER SECTION 5-21-110 THAT ARE BASED ON THE SAME ACTS OR OMISSIONS ARE REDUCED BY THE SAME AMOUNT OR TO ONE THOUSAND FIVE HUNDRED DOLLARS PER VIOLATION, WHICHEVER IS LESS. THE ADMINISTRATOR SHALL, TO THE EXTENT POSSIBLE, COORDINATE WITH THE FEDERAL CONSUMER FINANCIAL PROTECTION BUREAU BEFORE TAKING ACTION IN ORDER TO AVOID DUPLICATION OF INVESTIGATIONS AND PENALTIES, UNLESS THE ADMINISTRATOR'S INVESTIGATION OR PENALTIES RELATE TO ACTS OR OMISSIONS SEPARATE FROM THE FEDERAL CONSUMER FINANCIAL PROTECTION BUREAU ACTIVITIES.

(2) NOTHING IN THIS ARTICLE 21:

(a) CREATES A PRIVATE RIGHT OF ACTION; OR

(b) AFFECTS ANY REMEDY THAT A BORROWER MAY HAVE PURSUANT TO LAW OTHER THAN THIS ARTICLE 21.

5-21-114. Limitations. NOTWITHSTANDING ARTICLE 80 OF TITLE 13, ALL ACTIONS BROUGHT UNDER THIS ARTICLE 21 MUST BE COMMENCED WITHIN FOUR YEARS AFTER THE DATE ON WHICH ANY VIOLATION OF THIS ARTICLE 21 OCCURRED OR THE DATE ON WHICH THE LAST IN A SERIES OF THE ACTS OR PRACTICES OCCURRED OR WITHIN FOUR YEARS AFTER THE PLAINTIFF DISCOVERED OR IN THE EXERCISE OF REASONABLE DILIGENCE SHOULD HAVE DISCOVERED THE OCCURRENCE OF A VIOLATION OF THIS ARTICLE 21; EXCEPT THAT THE PERIOD OF LIMITATION PROVIDED IN THIS SECTION MAY BE EXTENDED FOR A PERIOD OF ONE YEAR IF THE PLAINTIFF PROVES THAT FAILURE TO TIMELY COMMENCE THE ACTION WAS CAUSED BY THE DEFENDANT ENGAGING IN CONDUCT CALCULATED TO INDUCE THE PLAINTIFF TO REFRAIN FROM OR POSTPONE THE COMMENCEMENT OF THE ACTION.

5-21-115. Confidential information. (1) THE ADMINISTRATOR SHALL NOT MAKE PUBLIC THE NAME OR IDENTITY OF A PERSON WHOSE ACTS OR CONDUCT THE ADMINISTRATOR INVESTIGATES OR EXAMINES PURSUANT TO THIS ARTICLE 21 OR THE FACTS DISCLOSED IN THE INVESTIGATION OR EXAMINATION.

(2) THE ADMINISTRATOR MAY DISCLOSE NOTIFICATION RECORDS PROVIDED TO THE ADMINISTRATOR AND OTHER CONTENTS OF THE RECORDS MAINTAINED PURSUANT TO THIS ARTICLE 21, BUT THE ADMINISTRATOR SHALL NOT MAKE PUBLIC THE CONFIDENTIAL INFORMATION CONTAINED IN THE RECORDS.

(3) THE RESTRICTIONS ON THE DISCLOSURE OF INFORMATION IN SUBSECTIONS (1) AND (2) OF THIS SECTION DO NOT APPLY TO DISCLOSURES BY THE ADMINISTRATOR IN ACTIONS OR ENFORCEMENT PROCEEDINGS PURSUANT TO THIS ARTICLE 21.

5-21-116. Reporting. (1) THE DEPARTMENT OF LAW SHALL INCLUDE IN ITS ANNUAL PRESENTATIONS HELD PURSUANT TO SECTION 2-7-203 UPDATES CONCERNING THE ADMINISTRATION OF THIS ARTICLE 21, INCLUDING:

(a) COMPLAINTS DATA, ENFORCEMENT ACTIONS, AND OTHER RELEVANT REGULATORY DATA; AND

(b) THE USE OF FEES COLLECTED BY THE ADMINISTRATOR PURSUANT TO THIS ARTICLE 21 AND THE USE OF FEES SUBJECT TO SECTION 12-10-718 THAT ARE REAPPROPRIATED TO THE DEPARTMENT OF LAW PURSUANT TO SECTION 12-10-719.

SECTION 2. In Colorado Revised Statutes, 13-4-102, **add** (2)(nn) as follows:

13-4-102. Jurisdiction. (2) The court of appeals has initial jurisdiction to:

(nn) REVIEW FINAL DECISIONS OR ORDERS OF THE ADMINISTRATOR AS PROVIDED IN ARTICLE 21 OF TITLE 5.

SECTION 3. Appropriation. For the 2021-22 state fiscal year, \$51,783 is appropriated to the department of law for use by consumer protection. This appropriation is from the uniform consumer credit code cash fund created in section 5-6-204 (1), C.R.S., and is based on an assumption that the department will require an additional 0.5 FTE. To implement this act, the department may use this appropriation for consumer credit unit.

SECTION 4. Act subject to petition - effective date - applicability. (1) This act takes effect January 1, 2022; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to conduct occurring on or after the applicable effective date of this act.

Approved: July 7, 2021